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<b>TRANSMITTAL OF APPEAL BRIEF</b>			Docket No. 65678-0032
In re Application of: Andrew F. Suhy			
Application No. 09/653,735-Conf. #5810	Filing Date September 1, 2000	Examiner C. L. Hewitt	Group Art Unit 3621
Invention: APPARATUS AND METHOD FOR TRACKING AND MANAGING PHYSICAL ASSETS			

**TO THE COMMISSIONER OF PATENTS:**

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed: December 12, 2003

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Dated: February 12, 2004

Charles A. Bleneman  
Attorney Reg. No. : 51,472  
RADER, FISHMAN & GRAUER PLLC  
39533 Woodward Avenue  
Suite 140  
Bloomfield Hills, Michigan 48304  
(248) 594-0648

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(Jennifer S. Greer)

Serial No. 09/653,735  
Attorney Docket No. 65678-0032



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: SUHY

Serial No.: 09/653,735

Group Art Unit: 3621

Filed: 9/01/2000

Examiner: HEWITT II, Calvin L.

For: APPARATUS AND METHOD FOR TRACKING AND MANAGING  
PHYSICAL ASSETS

Attorney Docket No.: 65678-0032

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BRIEF ON APPEAL

Honorable Sir:

This Appeal is taken from the Examiner's Final Rejection dated August 12, 2003 (hereinafter the "Final Office Action") of claims 1-8 and 12-24 in the above-identified application. The Notice of Appeal was timely filed on December 12, 2003. Submitted herewith are two additional copies of this Appeal Brief. Applicant (hereinafter "Appellant") respectfully requests consideration of this appeal by the Board of Patent Appeals and Interferences for allowance of the present patent application referenced above.

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## **I. REAL PARTY IN INTEREST**

The Real "Party-In-Interest" is Dana Corporation, located at 4500 Dorr Street, P.O. Box 1000, Toledo, Ohio 43697. Dana Corporation was assigned all rights to the U.S. Patent Application identified by Serial No. 09/653,735 on June 2, 2003 by Dana Commercial Credit Corporation of 660 Beaver Creek Circle, Maumee, Ohio 43537.

## **II. RELATED APPEALS AND INTERFERENCES**

On July 9, 2003, Appellant filed a notice of appeal, and on September 9, 2003 Appellant filed an Appeal Brief, appealing the final rejection of U.S. Application Serial No. 09/441,289 filed November 16, 1999. The application at issue in this appeal is a C-I-P application claiming priority from application 09/441,289.

On July 9, 2003, Appellant filed a notice of appeal, and on September 9, 2003 Appellant filed an Appeal Brief, appealing the final rejection of U.S. Application Serial No. 09/504,000, filed February 14, 2000 as a C-I-P application claiming priority from application 09/441,289. The application at issue in this appeal is a C-I-P application claiming priority from application 09/504,000.

On October 9, 2003, Appellant filed a notice of appeal, and on December 9, 2003 Appellant filed an Appeal Brief, appealing the final rejection of U.S. Application Serial No. 09/504,343, filed February 14, 2000 as a C-I-P application claiming priority from application 09/441,289. The application at issue in this appeal is a C-I-P application claiming priority from application 09/504,343.

On October 24, 2003, Appellant filed a notice to appeal the final rejection of U.S. Application Serial Number 09/503,671, filed February 14, 2000 as a C-I-P application claiming priority from application 09/441,289. On November 25, 2003, after Appellant had filed the afore-mentioned notice of appeal, the Office mailed a new final rejection of all claims. In response, Appellant submitted an Amendment Pursuant to 37 C.F.R. §1.116 dated January 20, 2004. An Advisory Action was mailed on February 2, 2004. The application at issue in this appeal is a C-I-P application claiming priority from application 09/503,671.

On December 12, 2003, Appellant filed a notice to appeal, and on February 12, 2004 Appellant filed an Appeal Brief, appealing the final rejection of U.S. Application Serial Number 09/702,363, filed October 31, 2000 as a C-I-P application claiming priority from the following applications: U.S. Application Serial No. 09/441,289 filed November 16, 1999; U.S. Provisional Application Serial No. 60/166,042 filed November 17, 1999; U.S. Application Serial No. 09/503,671 filed February 14, 2000; U.S. Application Serial No. 09/504,000 filed February 14, 2000; U.S. Application Serial No. 09/504,343 filed February 14, 2000; and U.S. Application Serial No. 09/653,735 filed September 1, 2000 (the subject of this appeal).

### **III. STATUS OF CLAIMS**

Claims 1-8 and 12-24 are pending in the application and are the subject of this Appeal. The present application was filed on September 1, 2000 with originally-filed claims 1-20. In response to the Office Action dated March 14, 2003, Appellant submitted an Amendment and Response to Office Action dated July 14, 2003 (hereinafter the "July 14 Response"), in which claims 9-11 were cancelled, claims 1, 5, 7, and 8 were amended, and claims 21-24 were added. In response to the Final Rejection mailed August 12, 2003, Appellant filed an Amendment and Request for Reconsideration Pursuant to 37 C.F.R. § 1.116 on October 10, 2003 (hereinafter the "Request for Reconsideration"). Appellant filed a Notice of Appeal December 12, 2003. In an Advisory Action mailed December 24, 2003, the Examiner entered an amendment to claim 5 proposed in the Request for Reconsideration and maintained the rejections of all pending claims. No claims have been allowed.

In the Final Office Action, claims 1-7 and 12-24 were rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 5,875,430 ("Koether") in view of U.S. Patent No. 6,230,081 ("Albertshofer"); and claim 8 was rejected under 35 U.S.C. 103(a) as being obvious over Koether and Albertshofer and further in view of U.S. Patent No. 6,003,808 ("Nguyen"). The Examiner also relied on Official Notice for the rejection of claims 3-4, 16-17, and 22. Claims 9-11 had been cancelled prior to the Final Office Action and accordingly the rejection of those claims is not appealed herein.

#### **IV. STATUS OF AMENDMENTS**

In the Request for Reconsideration, claim 5 was amended subsequent to the final rejection solely for the purposes of correcting a typographical omission and to place the application in better form for appeal. As stated in the Advisory Action dated December 24, 2003, the amendment to claim 5 has been entered by the Examiner.

No other amendments have been filed subsequent to the final rejection. A copy of all claims on appeal is attached hereto as an Appendix.

#### **V. SUMMARY OF THE INVENTION**

By way of background, asset users typically lease assets based on a fixed-lease arrangement. A fixed-lease arrangement usually involves a fixed lease rate per a specified unit of time, such as a month. Such lease arrangements can produce waste for both the lessor and the lessee depending on whether the asset is over-utilized or under-utilized relative to the fixed lease rate. Lessees often end up paying a higher fixed lease rate to cover the risk that the lessor is taking that the lessee may over-utilize the asset. Lessees may be motivated to get their money's worth by over-utilizing the asset, causing the asset owner to lose money in the form of asset depreciation.

The present invention relates in general to systems and methods for tracking and managing physical assets to improve productivity and reduce waste by subjecting the physical assets to a form of usage-based billing. In particular, this invention relates to a computer based system for automatically gathering, analyzing, and delivering information relating to the utilization of physical assets, such as a fleet of industrial equipment. The invention maximizes productivity while reducing the operating costs and administrative burdens associated with physical assets such that it is practical to provide a form of usage-based billing that is beneficial to both the lessor and lessee. (Specification, page 1, lines 13-20).

Physical assets, including non-fixed or movable assets such as forklifts, are each preferably provided with a data acquisition device for sensing and storing one or more operating characteristics associated with the asset. The acquired data can then be transmitted through space to a receiver connected to a local controller for storing such information. The local controller in turn can transmit the acquired data over the Internet to a remote analysis system. In

response to the acquired data, the remote analysis system automatically analyzes it and generates reports that can be made available for review by one or more persons responsible for managerial review, such as an asset owner. (Specification, page 3, lines 13-23; page 17, lines 12-15.)

The system uses the analysis of operating characteristics of an asset to determine a lease rate for the asset. Specifically, the system can develop a variable-amount lease rate based on the analysis of objective criteria that may be based in large part on the actual portion of the asset's life that is consumed by the asset user (e.g., usage hours). Accordingly, the system can use the analysis asset utilization to determine whether to use usage-based billing and what lease rate will be cost-effective based on the asset utilization. (Specification, page 18, lines 21-24; and page 19, lines 1-7.)

The system can base the asset utilization analysis on a number of objective criteria, including operating conditions of the asset that might be considered important in making effective management decisions regarding operation of the asset. Such operating conditions may include, for example, the time of duration of use (and non-use), distances traveled, the extent of utilization of the asset, asset usage within a fixed time period, and certain performance parameters associated with a particular asset. Further, the system can adjust the asset usage for maintenance considerations, thereby using the maintenance information to affect the lease rate. (Specification, page 8, line 30 – page 9, line 2; page 17, lines 24-26; page 19, lines 31-33.)

By monitoring and analyzing data acquired from an asset, the system encourages a form of usage-based billing that provides advantages to both the lessor and lessee over typical lease arrangements where a fixed lease amount is paid over the life of the lease. In particular, the system provides the asset owner, asset user, maintenance organization, and asset supplier with information regarding the asset that may lead the parties to leasing arrangements that are more cost effective than a fixed-fee lease agreement. (Specification at page 17, lines 16-21.)

For example, the system provides the asset owner with helpful information that may make the asset owner willing to share in a greater portion of the risk associated with the utilization of the asset by determining a lease rate based on an analysis of the asset. Rather than entering into a traditional fixed lease amount, the asset owner may be willing to enter into a hybrid lease arrangement wherein the lease charge may be a combination of one or more of the following elements: 1) a minimum payment that has to be made if asset utilization is below a

pre-determined minimum threshold; 2) a usage based-payment that is made if usage is above the pre-determined minimum threshold and below a pre-determined maximum threshold; 3) a penalty payment or surcharge is made if utilization is higher than the pre-determined maximum threshold; and 4) payments/rewards based on incentive issues such as asset re-allocation or timely maintenance. (Specification, page 18, lines 21-32.)

To help the involved parties determine a beneficial lease arrangement, the system provides the involved parties, such as the asset owner, with information related to the analysis of the acquired objective criteria. The asset owner can use the information, e.g., maintenance performance information, to evaluate the relationship with other parties, such as the maintenance organization or the asset supplier. The evaluation may lead to incentives, penalties, price adjustments, and/or a change in the relationship. The parties can analyze the provided information to establish a lease rate. For example, the asset owner can use the system-provided analysis and maintenance information to set a lease rate that is cost-effective to the parties involved in the lease. (Specification, page 18, lines 6-16.)

The system minimizes the costs and the wastes involved in leasing assets by tracking and providing asset information, such as operating characteristics and maintenance information, to responsible parties, such as maintenance organizations, asset manufacturers or suppliers, asset owners, and leasing companies. With up-to-date information concerning the asset at their disposal, the third parties may choose to share the risk of the asset's usage, maintenance, and performance through creative leasing arrangements with the asset user. An asset owner, for example, may be willing to enter into a usage-based lease arrangement when it has the ability to base a lease rate on the operating characteristics and the maintenance information related to the assets. Similarly, a leasing company that can reduce ownership risk through asset monitoring and appropriate asset utilization is more likely to agree to a hybrid minimum term payment and asset usage billing system or even a usage based billing system with no minimum payments. (Specification, page 3, line 26 – page 4, line 5).

## **VI. ISSUES PRESENTED**

A. Whether claims 1-7 and 12-24 are unpatentable under 35 U.S.C. §103(a) over Koether in view of Albertshofer.

B. Whether claim 8 is unpatentable under 35 U.S.C. §103(a) over Koether and Albertshofer in view of Nguyen.

## **VII. GROUPING OF CLAIMS**

The claims do not stand or fall together. Claims 1, 12-14, and 23 stand or fall together as Claim Group A. Claim 18 stands or falls alone as Claim Group B. Claim 7 stands or falls alone as Claim Group C. Claim 24 stands or falls alone as Claim Group D. Claim 21 stands or falls alone as Claim Group E. Claims 2 and 15 stand or fall together as Claim Group F. Claims 3 and 16 stand or fall together as Claim Group G. Claims 4 and 17 stand or fall together as Claim Group H. Claim 19 stands or falls alone as Claim Group I. Claim 22 stands or falls alone as Claim Group J. Claims 5-6 stand or fall together as Claim Group K. Claims 8 and 20 stand or fall together as Claim Group L. Reasons for separate patentability of the above-indicated Claim Groups A, B, C, D, E, F, G, H, I, J, K, and L are presented in the Arguments section pursuant to 37 C.F.R. § 1.192(c)(5).

## **VIII. ARGUMENTS**

### **A. Introduction**

Claim Groups A, B, C, D, E, F, G, H, I, J, K, and L are each in condition for allowance for at least two distinct reasons. First, as detailed below with respect to each claim group, the Examiner has failed to establish a *prima facie* case of obviousness because he has not specifically addressed each rejected claim limitation, and the prior art of record does not teach or suggest each recited claim limitation. Glaringly, the Examiner has failed to respond to all of the arguments and the requests for support that were presented by Appellant in the July 14 Response and maintained in the Request for Reconsideration. For example, as detailed below, the Examiner has not provided support for the taking of Official Notice even though the Appellant requested, in both the July 14 Response and the Request for Reconsideration, that such support be provided pursuant to 37 CFR 1.104(d)(2) and MPEP 2144.04. Second, as is also detailed below with respect to each claim group, the Examiner has failed to establish a *prima facie* case of obviousness by failing to provide a motivation to modify or combine the cited art.

A *prima facie* case of obviousness requires, among other things, that the applied references teach or suggest all of the claim limitations. See MPEP §2143; *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1444 (Fed. Cir. 1991); *In re Royka*, 490 F.2d 981, 180 USPQ 560, 562 (CCPA 1972). Appellant respectfully submits that the Examiner failed to establish a *prima facie* case of obviousness because the references cited in the Final Office Action merely generally address some of the elements included in Appellant's claims as is detailed below. Consequently, the references do not teach every element of the claims, and the rejections do not satisfy the standard set forth by the Federal Circuit in *In re Thrift*, Case Number 01-1445 (Fed. Cir. August 9, 2002), which prohibits the rejections of claims based on a "very general and broad conclusion" when "cited references do not support each limitation" in a claim. Moreover, as the Federal Circuit decision in *In re Sang Su Lee*, 2002 U.S. App. LEXIS 855 (Fed. Cir. January 18, 2002) makes clear, each and every element of Appellant's claims must be supported by a prior art citation in order to reject Appellant's claims.

The Examiner has not satisfied the above requirements for establishing a *prima facie* case of obviousness because the Final Office Action only generally addresses some of the elements of the Appellant's claims. The Final Office Action fails to separately identify each claim and its limitations, and fails to state how the prior art of record applies to each limitation of each claim. For example, paragraphs 4 and 5 of the Final Office Action provide a list of disclosures by Koether without identifying the claim limitations on which the Examiner believes each of these disclosures reads. The listed disclosures do not all match limitations in the Appellant's claims. The Examiner has therefore left it to the Appellant to guess which claim limitation is being rejected by any given listing of a disclosure by Koether. By failing to specifically identify the claim limitations on which the Examiner believes the cited art disclosures reads, the Examiner has failed to establish a *prima facie* case of obviousness.

Further, it appears that the Examiner intended many of the stated disclosures from Koether to be combined with the disclosure from Albertshofer, the disclosure from Nguyen, or with the taking of Official Notice. However, it is impossible for Appellant to determine what the Office believes to be the basis for an obviousness rejection of each claim because the Final Office Action fails to identify specific claims, much less specific claim limitations, to which the prior art of record is being applied. In short, the Final Office Action fails to cite support in the

prior art for every claim limitation in the Appellant's claims. Therefore, the Final Office Action fails to establish a *prima facie* case of obviousness against such claim limitations.

Claim Groups A, B, C, D, E, F, G, H, I, J, K, and L are all in condition for allowance at least because (1) the Final Office Action does not adequately identify citations in the art that would render each and every claim limitation obvious, (2) the cited art does not disclose all of the claim limitations of Claim Groups A, B, C, D, E, F, G, H, I, J, K, and L, and (3) the modification and combination of the cited references asserted by the Examiner would not have been obvious to one of ordinary skill in the art at the time of invention because there was no motivation to modify or combine them. Thus, the Examiner has failed to establish a *prima facie* case of obviousness against each of the Claim Groups.

**B. All Claim Groups are allowable because the cited prior art does not teach or suggest the claim limitation of an analysis of "at least one operating characteristic of the asset to determine a lease rate for the asset."**

In the Office Action, the claims of Claim Group A (claims 1, 12-14, and 23) and Claim Group B (claim 18) were rejected under 35 U.S.C. 103(a) as being obvious over Koether in view of Albertshofer. However, the cited references do not teach or suggest every recited limitation in the independent claims (claims 1, 13, and 18). Independent claim 1 recites the limitation of "a sub-system that analyzes said at least one operating characteristic of the asset to determine a lease rate for the asset, the lease rate being a variable". Independent claims 13 and 18 recite the same concept of determining a lease rate based on at least one operating characteristic. Neither Koether nor Albertshofer teach determining a variable lease rate based on an asset's operating characteristics. Neither do the references provide any motivation to modify the cited art to teach a variable lease rate.

**1. The prior art of record does not teach determining a lease rate as recited in claims 1, 13, and 18.**

The Examiner concedes that "Koether doesn't explicitly recite determining a lease rate." (Final Office Action, page 4.) Therefore, the Examiner relies on Albertshofer to determine a lease rate. The Examiner asserts that "Albertshofer teaches an asset usage monitoring system that monitors asset performance . . . to determine a leasing rate." (Final Office Action, pages 4-5.)

As Appellant argued on pages 10-11 of the July 14 Response, neither the portions of Albertshofer cited by the examiner, nor any other portions of Albertshofer, teach determining a lease rate for an asset, much less determining a *lease rate* based on analysis of at least one of the asset's operating characteristics. Rather, Albertshofer teaches calculating a *total lease amount* as "a function of the usage duration of the vehicle or its distance-gone." (Albertshofer, col. 2, lines 36-38.) Thus, Albertshofer's "rate" is a constant independent of an operating characteristic, which is multiplied by the operating characteristic to give the total lease amount. Albertshofer's disclosure is directed toward one-time usage of golf carts (Albertshofer, col. 1, lines 8-10), Thus, for example, if the hourly rate for renting a golf cart is \$10.00 (ten dollars), then renting it for two (2) hours results in a total lease amount of \$20.00 (twenty dollars). Albertshofer's rate is a constant multiplied by the variable operating characteristic, which is a usage duration, *e.g.*, two hours, as in the forgoing example.

Albertshofer is totally dissimilar from and in fact teaches away from the claim limitation involving an analysis of at least one operating characteristic of the asset to determine a lease rate for the asset. The claims teach that the rate is a variable affected by an analysis of at least one operating characteristic. In direct contrast to the teachings of Albertshofer, in the present invention there is no constant "rate" such as \$10.00 (ten dollars) an hour. Instead, the rate itself will be variable based on an analysis of at least one operating characteristic. Thus, the total lease amount will have to involve a calculation of a non-constant rate (itself a variable) as a function of other variables. The Examiner's argument that Albertshofer necessarily teaches "a variable 'lease rate', as the lease price is a function of a variable (*i.e.* equipment usage)" (Office Action, page 3) ignores the significant distinction between a rate, which is a constant, and a rate that requires an analysis of at least one operating characteristic of the asset, making it a variable. The Examiner further complicates his analysis by citing the definition of "rate" found in Webster's Ninth Collegiate Dictionary (Office Action, page 5). Not willing to use the ordinary meaning of "rate" intended by Albertshofer, the Examiner appears to be arguing that the total lease amount taught by Albertshofer is actually a "rate" according to commonly understood definitions of that term. Assuming for the sake of argument that Webster's Ninth Collegiate Dictionary was published prior to the instant application and that it provides commonly accepted definitions of the word "rate", Appellant maintains that Albertshofer does not teach the variable

lease rate recited in independent claim 1. If the Examiner intends to argue that the rate in Albertshofer is an “amount . . . measured per unit of something else” or “an amount of payment or charge based on another amount,” Appellant agrees, inasmuch as Albertshofer teaches usage charges based on operating statistics, wherein the rate is a known value or constant multiplied by a variable (e.g., time of usage) to give the total lease amount. However, Albertshofer does not teach determining a lease rate that can then be used as a variable in the calculation of the amount to be charged for a lease.

In short, charging a lease amount based simply on a constant (e.g., usage duration or its distance) means that the rate amount is fixed with either usage duration of the vehicle or its distance being the only variable to multiply by the fixed lease rate to obtain the total cost of the lease. Thus, Albertshofer does not teach a variable lease rate. In contrast, the claimed invention uses an operating characteristic to set a lease rate acting as a variable, as opposed to a constant as taught in Albertshofer.

**2. The Examiner has shown no motivation to combine Koether and Albertshofer.**

As mentioned above, a *prima facie* case of obviousness requires that there be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. See MPEP § 2143; *In re Linter*, 458 F.2d 1013, 173 USPQ 560, 562 (CCPA 1972). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Moreover, the fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

The Examiner appears to be modifying Koether, explicitly acknowledged not to teach determining a lease rate, with Albertshofer, evidently alleged to suggest a modification of Koether with this claim element. (See Final Office Action, page 4.) However, the closest the Examiner comes to stating a motivation to combine Koether and Albertshofer is the statement on page 5 of the Final Office Action that, following the definition of the word “rate” found in a

dictionary, it would have been obvious to one of ordinary skill in the art to calculate a rate based on any “quantity, amount, or degree of something within the scope of knowledge and understanding of one of ordinary skill in the appropriate art.” In other words, because a rate may be based on any quantity it would have been obvious to calculate a rate based on any quantity.

Not only does the Examiner’s reasoning fail to address why one of ordinary skill in the art would have wished to calculate a rate, the Examiner provides no explanation as to why one of ordinary skill in the art would have been motivated by the cited references *to analyze an operating characteristic of an asset to determine a lease rate for the asset*. Moreover, the cited references provide no motivation for their combination.

Accordingly, Claim Groups A and B are in condition for allowance because independent claims 1, 13, and 18 recite the concept of determining a variable lease rate for an asset based in part on at least one operating characteristic of the asset. Further, all claims depending from independent claims 1, 13, and 18 (claims 2-8, 12, 14-17, and 19-24) are in condition for allowance. Therefore, all Claim Groups are in condition for allowance.

**C. Claim Groups B and C are in condition for allowance because the cited prior art fails to disclose the claim limitation of “maintenance information affecting said lease rate.”**

The claims of Claim Groups B (claim 18) and C (claim 7) were rejected under 35 U.S.C. 103(a) as being obvious over Koether in view of Albertshofer. However, the Examiner has failed to state a *prima facie* case of obviousness with respect to Claim Groups B and C. Claim 7 recites the claim limitation of “maintenance information affecting said lease rate.” Claim 18 recites “an asset owner establishing said lease rate and analyzing said maintenance information as a factor in setting said lease rate.” Appellant argued on pages 11-12 of the July 14 Response that the prior art did not teach “maintenance information affecting said lease rate. The Examiner has failed to respond to these arguments in the Final Office Action, which provides no support in the prior art of art for rejecting this claim limitation. Further, neither Koether nor Albertshofer teach “maintenance information affecting said lease rate.”

On page 4 of the Final Office Action, the Examiner asserts that Koether (column 8, line 48 through column 9, line 44) teaches “receiving operating characteristics adjusted by maintenance information.” Even if Koether does teach this concept as asserted by the Examiner, the Final Office Action omits to address the claim limitation of “maintenance information

affecting said lease rate.” The Examiner’s omission is unsurprising, inasmuch as a review of Koether reveals that Koether fails to teach “maintenance information affecting said lease rate.”

Albertshofer also fails to teach “maintenance information affecting said lease rate.” On pages 4-5 of the Final Office Action, the Examiner asserts that “Albertshofer teaches an asset usage monitoring system that monitors asset performance (e.g. a plurality of characteristics over a fixed period of time, maintenance information) to determine a leasing rate.” However, none of the citations<sup>1</sup> to Albertshofer provided in the Final Office Action recites “maintenance information affecting said lease rate.” Although Albertshofer discloses using servicing intervals to assist automating vehicle maintenance, Albertshofer does not teach using any maintenance information to determine a lease rate (column 2, lines 36-44). Albertshofer repeatedly limits its teachings to calculating an amount due based on the measured usage of the vehicle, such as hours of usage or distance gone multiplied by a constant rate, which is fixed (e.g., \$10.00 (ten dollars) per hour) (column 2, lines 36-44; column 6, lines 23-27). Albertshofer does not teach using more than measured usage to calculate an amount due. Clearly, Albertshofer’s teachings are not the same as “maintenance information affecting said lease rate.”

Therefore, the Final Office Action fails to establish a *prima facie* case of obviousness against Claim Groups B and C. Accordingly, claims 7, 18, and all of their dependent claims (claims 19-20) are in condition for allowance.

**D. Claim Group D is in condition for allowance because the cited prior art fails to disclose the claim limitation of “adjusting said lease rate based on a determination of asset maintenance timeliness.”**

Claim 24, the claim of Claim Group D, was rejected under 35 U.S.C. 103(a) as being obvious over Koether in view of Albertshofer. However, claim 24 is in condition for allowance because the cited references do not teach “adjusting said lease rate based on a determination of asset maintenance timeliness.” Further, the Final Office Action fails to address this claim limitation.

Not only does the cited prior art fail to teach “maintenance information affecting said lease rate” as discussed above in relation to Claim Groups B and C, the cited art fails to teach “asset maintenance timeliness” as a factor in setting the lease rate. As mentioned above, Koether

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<sup>1</sup> Page 5 of the Final Office Action cites Albertshofer column 1, lines 55-61; column 2, lines 36-44; column 3, lines 31-39; column 4, lines 10-26; and column 6, lines 23-27, 40-50.

does not teach using maintenance information to determine a lease rate, and Albertshofer's teaching of "servicing intervals" is limited to assisting with automating vehicle maintenance (column 2, lines 38-44). Thus, Albertshofer and Koether do not teach "adjusting said lease rate based on a determination of asset maintenance timeliness." Further, the Final Office Action does not consider "asset maintenance timeliness" for determining a lease rate. For the foregoing reasons, the Final Office Action fails to establish a *prima facie* case of obvious against Claim Group D, and Claim Group D is in condition for allowance.

**E. Claim Group E is in condition for allowance because the cited prior art fails to disclose the claim limitation of "said lease rate is lower if timely maintenance is performed and said lease rate is higher if said maintenance is untimely."**

Claim 21, the claim of Claim Group E, was rejected under 35 U.S.C. 103(a) as being obvious over Koether in view of Albertshofer. Claim 21 is in condition for allowance because the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 21. On page 12 of the July 14 Response, Appellant argued that the prior art does not teach the claim limitation of claim 21. The Examiner has failed to respond to this argument or evidently to address claim 21, leaving the Final Office Action devoid of any consideration of the claim limitations that "said lease rate is lower if timely maintenance is performed and said lease rate is higher if said maintenance is untimely." Further, the cited prior art does not teach these claim limitations. Therefore, Claim Group E is in condition for allowance because the Final Office Action fails to establish a *prima facie* case of obviousness against Claim Group E.

**F. Claim Groups E, F, G, H, I, and J are in condition for allowance because the Final Office Action explicitly and unjustifiably ignores certain limitations by mischaracterizing them as "conditional".**

In the Final Office Action the Examiner asserted, without providing any grounds for so doing, that the Office may ignore some of the claim limitations of Claim Groups E (claim 21), F (claims 2 and 15), G (claims 3 and 16), H (claims 4 and 17), I (claim 19), and J (claim 22) by considering their alternative (Final Office Action, page 3). The Examiner apparently would like to suggest that some of the language in these claims is optional so that the Office need not address it. The Examiner's assertion makes no sense in the context of Appellant's claims, which do not contain any language that may be properly characterized as "alternative".

In contrast to what the Examiner attempts to characterize as optional claim language, claims 2-4, 15-17, 19, 21, and 22 recite testing for particular conditions and then executing steps if the conditions are satisfied. In general, claims 2-4, 15-17, 19, 21, and 22 include limitations related to the lease rate including a minimum charge if said operating characteristic is below a pre-determined threshold and/or a surcharge if said operating characteristic is above a pre-determined threshold.<sup>2</sup> These claim limitations are valid process limitations directed toward the systems and methods for testing for certain conditions and then executing specific functions if the conditions are satisfied. The limitations are not “alternative limitations” as suggested in the Final Office Action (page 3).

Further, there is no valid support for the Examiner ignoring the cited claim limitations. Not only has the Final Office Action failed to consider the above-cited functions recited in the claims, it has also failed to consider the process of testing for certain conditions that may trigger those functions. There is no basis for treating a “testing” step, or the processes or functions that are conditionally executed based on the “testing” step, as alternative limitations to claims. Claims 2-4, 15-17, 19, 21, and 22 recite process steps related to adjusting the lease rate when a specific condition is tested for and satisfied. This is quite distinct from claim language that seeks to introduce alternative limitations into the claims.

Not only do numerous issued patents include claims with conditional limitations based on testing steps, the U.S. Court of Appeals for the Federal Circuit gives weight to such limitations. Specifically, the Federal Circuit has stated that the order in which the steps of claim are performed can be mandated by the indication that a conditional step must be performed after a “testing” step. *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1370, 65 USPQ2d 1865, 1870 (Fed. Cir. 2003). Thus, the Court gave weight to both the “testing” steps and the conditional

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<sup>2</sup> Specifically, claims 2 and 4 recite, “said lease rate includes a minimum charge if said operating characteristic is below a pre-determined threshold.” Similarly, claims 15 and 17 recite “charging a minimum lease rate when said asset utilization is below a pre-determined threshold.” Claims 3 and 4 recite “said lease rate includes a surcharge if said operating characteristic is above a pre-determined threshold.” Similarly, claims 16 and 17 recite “charging a surcharge when said asset utilization exceeds a pre-determined threshold.” Claim 19 recites “said lease rate includes a minimum charge if said operating characteristic is below a pre-determined threshold or a surcharge if said operating characteristic is above a pre-determined threshold.” Claim 21 recites “said lease rate is lower if timely maintenance is performed and said lease rate is higher if said maintenance is untimely.” Claim 22 recites “a minimum payment that has to be made if measurement of said operating characteristic is below a pre-determined minimum threshold; a usage based-payment if measurement of said operating characteristic is above said pre-determined minimum threshold and below a pre-determined maximum threshold; a penalty payment or surcharge if measurement of said operating characteristic is higher than said pre-determined maximum threshold.”

steps of a claim. Clearly, a step that tests for a condition is entitled to just as much weight as any other step.

Therefore, by failing to consider all of the claim limitations of claims 2-3, 15-17, 19, 21, and 22, the Examiner has failed to establish a *prima facie* case of obviousness against the claims of Claim Groups E, F, G, H, I, and J. Accordingly, these Claim Groups are in condition for allowance. Claim Groups F, G, H, I, and J are also in condition for allowance for separate and distinct reasons discussed below.

**G. Claim Groups F, H, and J are in condition for allowance because the cited art fails to disclose the claim limitation that “said lease rate includes a minimum charge if said operating characteristic is below a pre-determined threshold.”**

The Final Office Action rejected the claims of Claim Groups F (claims 2 and 15), H (claims 4 and 17), and J (claim 22) under 35 U.S.C. 103(a) as being obvious over Koether in view of Albertshofer (page 3). Claim Groups F, H, and J are in condition for allowance because the Final Office Action wholly fails to address the claim limitation that “said lease rate includes a minimum charge if said operating characteristic is below a pre-determined threshold” as is recited in claims 2 and 4. Claims 15, 17, and 22 include similar limitations, and the same arguments apply. By not addressing the claim limitations related to a minimum charge based on a pre-determined threshold, the Final Office Action fails to establish a *prima facie* case of obviousness.

On page 11 of the July 14 Response, Appellant argued that the prior art does not teach the lease rate including a minimum charge if the operating characteristic is below a pre-determined threshold. The Examiner has failed to respond to this argument. Glaringly, the Final Office Action does not address the claim limitation related to a minimum charge based on a pre-determined threshold. Appellant maintains the argument that the prior art does not teach the lease rate including a minimum charge if the operating characteristic is below a pre-determined threshold.

It is unclear in the Final Office Action whether the Examiner intended to rely on a dictionary definition of “rate” to make a minimum charge obvious to one of ordinary skill in the art (page 5). To the extent that the Examiner relies on the cited dictionary definition to make obvious the claim limitations related to a minimum charge, the Examiner’s assertion is unclear

and irrelevant. The Final Office Action provides no explanation how the cited dictionary definition would have motivated one of ordinary skill in the art to include a minimum charge in the lease rate if the operating characteristic is below a pre-determined threshold. Further, the cited dictionary definition does not include any mention of a pre-determined threshold or a minimum charge based on the threshold. Clearly, the Final Office Action fails to address the lease rate including a “minimum charge if said operating characteristic is below a pre-determined threshold.” Moreover, the cited prior art does not teach this claim limitation. For the foregoing reasons, the Examiner has failed to establish a *prima facie* case of obviousness, and Claim Groups F, H, and J are in condition for allowance. Claim Groups H and J are also in condition for allowance for separate reasons discussed below.

**H. Claim Groups G, H, and J are in condition for allowance because the cited art fails to disclose the claim limitation that “said lease rate includes a surcharge if said operating characteristic is above a pre-determined threshold.”**

The Final Office Action rejected the claims of Claim Groups G (claims 3 and 16), H (claims 4 and 17), and J (claim 22) under 35 U.S.C. 103(a) as being obvious over Koether in view of Albertshofer (page 3). Claim Groups G, H, and J are in condition for allowance because the Examiner has failed to establish a *prima facie* case of obviousness against claims 3-4, 16-17, and 22. Claims 3 and 4 recite the claim limitation that “said lease rate includes a surcharge if said operating characteristic is below a pre-determined threshold.” Claims 16, 17, and 22 include similar limitations relating to charging a surcharge when asset utilization exceeds and/or falls below a pre-determined threshold. The Examiner relies on Official Notice to reject the claim limitations related to a surcharge (Final Office Action, page 4). However, the Examiner fails to provide any support for the taking of Official Notice that a surcharge is known in the art.

In response to the Examiner’s taking of Official Notice that surcharges are known in the art, Appellant, on page 11 of the July 14 Response, requested pursuant to MPEP §2144.04 that the Examiner provide a supporting affidavit or an appropriate reference to support the taking of Official Notice in the context of the invention. The Examiner has failed to provide such support as requested. As the Federal Circuit decision in *In re Sang Su Lee*, 2002 U.S. App. LEXIS 855 (Fed. Cir. January 18, 2002) makes clear, each and every element of the Appellant’s claims must be supported by a prior art citation in order to reject the Appellant’s claims. Because the

Examiner has provided no such support, the Examiner has failed to meet the Office's burden of establishing a *prima facie* case of obviousness against Claim Groups G, H, and J.

The Examiner appears to assert that the motivation to implement a surcharge when asset utilization rises above or falls below a pre-determined threshold is simply inherent in the definition of "surcharge". The Final Office Action (page 2) cites the definition of "surcharge" from Webster's Ninth Collegiate Dictionary and states that from this definition "to apply a surcharge is at least an obvious method of increasing revenues on the part of the party applying the surcharge." However, the Examiner does not explain, and it is not readily apparent, how the mere definition of a surcharge would have motivated one of ordinary skill in the art to include a surcharge in a lease rate if an operating characteristic is above a certain threshold.

The Examiner further contends that Appellant has not stated why the officially noticed fact – the obviousness of including a surcharge in a lease rate if an operating characteristic is above and/or below a certain threshold – is not considered to be common knowledge or well-known in the art (Final Office Action, page 2). The Examiner clearly misunderstands the Office's burden when Official Notice is taken. The Examiner has failed to provide any support or motivation for one of ordinary skill in the art to take a dictionary definition of "surcharge" and use the definition to read on the claims. Specifically, the Final Office Action contains no statement of any motivation to apply the allegedly well known concept of a surcharge to a lease rate if an operating characteristic is above a certain threshold. Such a statement, supported by a prior art reference upon Appellant's timely request, would have been required for the Examiner to maintain the rejection based upon Official Notice.

Moreover, it is unclear in the Final Office Action whether the Examiner intended to rely on a dictionary definition of "rate" to make a surcharge based on a pre-determined threshold obvious to one of ordinary skill in the art (pages 2 and 5). Similar to the argument above concerning a minimum charge, to the extent that the Examiner relies on the cited dictionary definition of "rate" to make obvious the claim limitations related to a surcharge, the Examiner's assertion is unclear and irrelevant. The Final Office Action provides no explanation how the cited dictionary definitions of "surcharge" and "rate" would have motivated one of ordinary skill in the art to include a surcharge with the lease rate if the operating characteristic is below a pre-

determined threshold. The cited dictionary definitions do not include any mention of a pre-determined threshold or a surcharge based on the threshold.

Further, on page 2 of the Final Office Action, the Examiner attempts to assert that the Appellant admitted that surcharges are well known in the art. However, Appellant has made no such admission simply by stating that “surcharges *may* be old” (July 14 Response, page 11, emphasis added). Moreover, such an admission would not read on including a surcharge in a lease rate if said operating characteristic is above or below a pre-determined threshold.

Clearly, the Final Office Action fails to address the lease rate including a “surcharge if said operating characteristic is below a pre-determined threshold.” Further, the cited prior art does not teach this claim limitation. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness, and Claim Groups G, H, and J are in condition for allowance.

**I. Claim Group H is in condition for allowance because the cited art fails to disclose both of the claim limitations that the lease rate includes a “minimum charge if said operating characteristic is below a pre-determined threshold” and “a surcharge if said operating characteristic is above a pre-determined threshold.”**

On page 3 of the Final Office Action, claims 4 and 17 were rejected under 35 U.S.C. 103(a) as being obvious over Koether in view of Albertshofer. Claim 4 recites “said lease rate includes a minimum charge if said operating characteristic is below a pre-determined threshold and a surcharge if said operating characteristic is above a pre-determined threshold.” Claim 17 recites a similar limitation. Claim Group H is in condition for allowance because the cited prior art fails to disclose both the “minimum charge” and the “surcharge” claim limitations recited in claims 4 and 17.

Based on the same reasons advanced above in favor of the patentability of Claim Groups F, G, H, and J, Claim Group H is in condition for allowance. Claim 4 is separately patentable because it recites both the lease rate including a minimum charge if the operating characteristic is below a pre-determined threshold *and* the lease rate including a surcharge if the operating characteristic is above a pre-determined threshold. Claim 17 recites similar limitations, and the same arguments apply. As discussed above in Sections G and H, the Final Office Action fails to establish a *prima facie* of obviousness against either one of these limitations, let alone against both of the limitations claimed together. Therefore, Claim Group H is in condition for allowance.

**J. Claim Group I is in condition for allowance because the cited art fails to disclose either of the claim limitations that the lease rate includes a “minimum charge if said operating characteristic is below a pre-determined threshold” or “a surcharge if said operating characteristic is above a predetermined threshold.”**

On page 3 of the Final Office Action, claim 19, the claim of Claim Group I, was rejected under 35 U.S.C. 103(a) as being obvious over Koether in view of Albertshofer. Claim 19 recites “said lease rate includes a minimum charge if said operating characteristic is below a pre-determined threshold or a surcharge if said operating characteristic is above a pre-determined threshold.” Claim 19 is in condition because the cited prior art fails to disclose either the “minimum charge” or the “surcharge” claim limitations recited in claim 19.

Based on the same reasons advanced above in favor of the patentability of Claim Groups F, G, H, and J, claim 19 is in condition for allowance. Claim 19 is separately patentable because it recites that the lease rate includes a minimum charge is said operating characteristic is below a pre-determined threshold *or* a surcharge if said operating characteristic is above a pre-determined threshold. As discussed above in Sections G and H, the Final Office does not establish a *prima facie* case of obviousness against either of these limitations. Therefore, Claim Group I is in condition for allowance.

**K. Claim Group J is in condition for allowance because the cited art fails to disclose all the claim limitations related to “a hybrid lease” as recited.**

The Final Office Action rejects the claim of Claim Group J, claim 22, under 35 U.S.C. 103(a) as being obvious over Koether in view of Albertshofer. Claim 22 is in condition for allowance at least because it recites “said lease rate is based on a hybrid lease arrangement.”

On page 12 of the July 14 Response, Appellant argued that the prior art of record does not teach the type of hybrid lease arrangement of claim 22. The Examiner has failed to respond to this argument, or evidently to address the limitations of claim 22. Claim 22 recites that the lease rate is based on a hybrid lease arrangement comprising a minimum payment that has to be made if the operating characteristic is below a pre-determined minimum threshold; a usage based-payment if the operating characteristic is above the pre-determined minimum threshold and below a pre-determined maximum threshold; and a penalty or surcharge is the operating characteristic is higher than a the pre-determined maximum threshold. The Final Office Action does not address, nor does the cited prior art teach, claim limitations related to minimum

payment and surcharge, let alone the combination of these limitations to form a hybrid lease arrangement. Further, the cited art does not teach the usage based-payment as claimed, much less its inclusion in the claimed hybrid lease arrangement.

For the forgoing reasons, the Examiner has failed to establish a *prima facie* case of obviousness against claim 22, and Claim Group J is in condition for allowance.

**L. Claim Group K is in condition for allowance because the cited art fails to disclose the claim limitation of “a plurality of operating characteristics used to determine said lease rate.”**

The Final Office Action rejects claims 5-6 (Claim Group K) under 35 U.S.C. 103(a) as being obvious over Koether in view of Albertshofer (page 3). However, claims 5-6 are in condition for allowance as dependents of claim 1. Claims 5-6 are also in condition for allowance on independent grounds, namely that the Examiner has failed to establish a *prima facie* case of obviousness against the claim limitation of “a plurality of operating characteristics used to determine said lease rate.”

On page 11 of the July 14 Response, the Appellant argued that the prior art of record failed to teach a plurality of operating characteristics used to set the lease rate. The Examiner has failed to respond to this argument, which argument is maintained by the Appellant. As the Examiner admits on page 4 of the Final Office Action, Koether does not teach determining a lease rate. Albertshofer also fails to teach using a plurality of operating characteristics to determine the lease rate. Although Albertshofer may arguably disclose more than one type of data, Albertshofer teaches away from using more than one operating characteristic to determine a lease rate. Specifically, Albertshofer teaches using a single attribute, such as usage duration *or* distance traveled, to determine a lease amount. (See Albertshofer, column 2, lines 38-38.) For the foregoing reasons, Claim Group K is in condition for allowance.

**M. Claim Group L is in condition for allowance because the cited art fails to establish a *prima facie* case of obviousness against Claim Group L.**

On pages 5-6 of the Final Office Action, the Examiner rejected claim 8 as being obvious over Koether, Albertshofer, and further in view of Nguyen. Claim 8 recites, *inter alia*, “a first party represents an asset user and a second party represents at least one of an asset supplier and a maintenance organization, and further comprising an asset owner, wherein said asset owner analyzes said maintenance information for a plurality of assets associated with at least one of

said asset supplier and said maintenance organization to evaluate its relationship based on overall maintenance performance.” The cited prior art does not teach all the limitations of claim 8.

On page 17 of the July 14 Response, Appellant observed that the Examiner apparently meant to include claim 20 in the rejection<sup>3</sup> using Nguyen because claim 20 includes limitations similar to the limitations of claim 8. However, the Examiner neither responded to this observation nor included claim 20 in the rejection using Nguyen. Thus, claim 20 is clearly patentable inasmuch as the Examiner acknowledges that neither Koether nor Albertshofer teach “analyzing maintenance information to evaluate a relationship based on maintenance performance.” (See Final Office Action, page 6.) However, recognizing that the Board may conclude that claim 20 was rejected in view of Nguyen, Appellant has included claim 20 in Claim Group L and the arguments below regarding claim 8 are equally applicable to claim 20.

Assuming *arguendo* that Koether teaches an asset user, asset owner, an asset supplier, and a maintenance organization as asserted on page 4 of the Final Office Action, neither Koether, Albertshofer, nor Nguyen teaches or suggests an asset owner analyzing maintenance information for a plurality of assets associated with at least one of said asset supplier and said maintenance organization to evaluate its relationship based on overall maintenance performance. The citation to Nguyen provided in the Final Office Action does not teach evaluating a relationship based on overall maintenance performance as claimed. In contrast, Nguyen teaches a warranty validation process that determines whether a completed maintenance task is covered by a warranty and sending the report to a servicing agent or manufacturer for processing of the warranty claim. (See Nguyen, column 4, lines 44-47; and column 5, lines 1-8).

Further, Appellant maintains the argument, made in the July 14 Response, that Nguyen is totally irrelevant to claim 8. As the July 14 Response explained on page 13, Nguyen merely teaches generating a warranty claim report for a particular asset, and offers no teaching or suggestion of reviewing maintenance information for a plurality of assets associated with either an asset supplier or a maintenance organization to evaluate the relationship of the asset owner with either party based on overall maintenance performance, as required by the claims. The Examiner has failed to respond to this argument.

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<sup>3</sup> The July 14 Response was responsive to a rejection of claim 11. In the July 14 Response, claim 11 was cancelled and claim 8 amended to include the limitations of claim 8.

In addition, the Final Office Action fails to provide any motivation to combine Nguyen, Koether, and Albertshofer to read on the limitations of claim 8. On page 6 of the Final Office Action, the Examiner asserts that it would have been obvious to combine the prior art references to validate warranty claims and/or allow an asset owner to determine whether to recall, or re-engineer a product base on the number of warranty claims. However, none of the cited references teaches recalling or re-engineering products based on warranty claims. Moreover, such functions do not read on the claim limitations of claim 8. Specifically, mere validation, recall, or re-engineering of warranty claims does not teach analyzing maintenance information to evaluate a relationship based on overall maintenance performance. Clearly, there is no motivation to combine Nguyen, Koether, and Albertshofer in any way that would read on claim 8.

For the forgoing reasons, the Examiner has not established a *prima facie* case of obviousness against claim 8 or claim 20, and Claim Group L is in condition for allowance.

## V. CONCLUSION


Appellant respectfully submits that all of the appealed claims in this application (claims 1-8 and 12-24) are patentable for at least the reasons stated above and request that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims. The references cited by the Examiner against the Appellant's claims fail to disclose several material elements of the Appellant's claims. Only one novel and non-obvious element is required for patentability. In summary, the rejection of Appellant's claims was not proper because the Examiner failed to: (i) disclose all of the claim elements in prior art; and (ii) provide evidence supporting the assertion that a suggestion or motivation existed in the art to combine or modify the references as asserted by the Examiner.

This brief is submitted in triplicate. It is believed that any fees due with respect to this paper have been identified in any transmittal accompanying this paper. However, if any additional fees are required in connection with the filing of this paper that are not identified in any accompanying transmittal, permission is given to charge account number 18-0013 in the name of Rader, Fishman and Grauer PLLC.

Respectfully submitted,

Date: February 12, 2004

By: \_\_\_\_\_

  
Michael B. Stewart, Reg. No. 36,018  
Charles A. Bieneman, Reg. No. 51,472  
Rader Fishman and Grauer PLLC  
39533 Woodward Ave, Suite 140  
Bloomfield Hills, Michigan 48304  
Attorneys for Appellant

Customer No. 0102091

Telephone Number (248) 594-0600

R0225798

**APPENDIX OF CLAIMS ON APPEAL – CLAIMS 1-8 and 12-24**

1. A system for gathering and analyzing data relating to a non-fixed movable asset comprising:

a local controller located at a first location for acquiring data that is representative of at least one operating characteristic of the asset;

an analysis controller located at a second location that is responsive to said acquired data from said local controller for generating an analysis of said acquired data; and

an electronic communications network connected between said local controller and said analysis controller and permitting transmission of said acquired data from said local controller to said analysis controller; and

a sub-system that analyzes said at least one operating characteristic of the asset to determine a lease rate for the asset, the lease rate being a variable.

2. A system as recited in claim 1, wherein said lease rate includes a minimum charge if said operating characteristic is below a pre-determined threshold.

3. A system as recited in claim 1, wherein said lease rate includes a surcharge if said operating characteristic is above a pre-determined threshold.

4. A system as recited in claim 1, wherein said lease rate includes a minimum charge if said operating characteristic is below a pre-determined threshold and a surcharge if said operating characteristic is above a pre-determined threshold.

5. A system as recited in claim 1, wherein there are a plurality of operating characteristics used to determine said lease rate.

6. A system as recited in claim 5, wherein said plurality of operating characteristics includes time of operation within a fixed period of time.

7. A system as recited in claim 1, said analysis controller receiving maintenance information affecting said operating characteristic, said maintenance information affecting said lease rate.

8. A system as recited in claim 1, said analysis controller receiving maintenance information affecting said operating characteristic, wherein a first party represents an asset user and a second party represents at least one of an asset supplier and a maintenance organization, and further comprising an asset owner, wherein said asset owner analyzes said maintenance information for a plurality of assets associated with at least one of said asset supplier and said maintenance organization to evaluate its relationship based on overall maintenance performance.

12. A system as recited in claim 1, wherein said asset is limited to motion in a pre-determined geographic region to ensure the acquisition of the data.

13. A method for gathering and analyzing data relating to an asset comprising the steps of:

activating a local controller located at a first location;

acquiring data that is representative of at least one operating characteristic of the asset which is communicated from the asset to said local controller;

transmitting said operating characteristic at pre-determined intervals from said local controller to an analysis controller located at a second location using an electronic communications network connected between said local controller and said analysis controller; and

a sub-system receiving data from said analysis controller and using said data, including said at least one operating characteristic of the asset, and

determining a lease rate for the asset based in part on said at least one operating characteristic of the asset.

14. A method as recited in claim 13, said at least one operating characteristic representing an objective criteria, said determining step comprising the sub-steps of measuring said criteria and generating a usage-based analysis of asset utilization.

15. A method as recited in claim 14, said determining step comprising the sub-step of charging a minimum lease rate when said asset utilization is below a pre-determined threshold.

16. A method as recited in claim 14, said determining step comprising the sub-step of charging a surcharge when said asset utilization exceeds a pre-determined threshold.

17. A method as recited in claim 14, said determining step comprising the sub-steps of charging a minimum lease rate when said asset utilization is below a first pre-determined threshold and charging a surcharge when said asset utilization exceeds a second pre-determined threshold.

18. A system for gathering and analyzing data relating to a non-fixed movable asset limited to motion in a predetermined geographic region to ensure the acquisition of said data comprising:

a local controller located at a first location for acquiring data that is representative of at least one operating characteristic of the asset;

an analysis controller located at a second location that is responsive to said acquired data from said local controller for generating an analysis of said acquired data, said analysis controller receiving maintenance information affecting said operating characteristic; and

an electronic communications network connected between said local controller and said analysis controller and permitting transmission of said acquired data from said local controller to said analysis controller; and

a sub-system that analyzes said at least one operating characteristic of the asset to determine a lease rate for the asset, an asset owner establishing said lease rate and analyzing said maintenance information as a factor in setting said lease rate.

19. A system as recited in claim 18, wherein said lease rate includes a minimum charge if said operating characteristic is below a pre-determined threshold or a surcharge if said operating characteristic is above a pre-determined threshold.

20. A system as recited in claim 18, wherein a first party comprises an asset owner and a second party represents at least one of an asset supplier and a maintenance organization, and wherein said asset owner analyzes said maintenance information for a plurality of assets associated with at least one of said asset supplier and said maintenance organization to evaluate its relationship based on overall maintenance performance.

21. A system as recited in claim 1, wherein said lease rate is lower if timely maintenance is performed and said lease rate is higher if said maintenance is untimely.

22. A system as recited in claim 1, wherein said lease rate is based on a hybrid lease arrangement comprising the following elements:

a minimum payment that has to be made if measurement of said operating characteristic is below a pre-determined minimum threshold;

a usage based-payment if measurement of said operating characteristic is above said pre-determined minimum threshold and below a pre-determined maximum threshold;

a penalty payment or surcharge if measurement of said operating characteristic is higher than said pre-determined maximum threshold.

23. A system as recited in claim 22, wherein said operating characteristic is utilization.

24. A system as recited in claim 22, comprising the further element of adjusting said lease rate based on a determination of asset maintenance timeliness.